

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JAMES THOR KIRK,

Petitioner,

v.

No. 22-cv-0035 DHU/SMV

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING MOTION TO PROVIDE MEDICAL RECORDS

THIS MATTER is before the Court on Petitioner James Thor Kirk's Motion to Provide Medical Records (COVID 19), filed January 27, 2022 (the "Motion"). [Doc. 2]. In the Motion, Petitioner requests leave to examine medical records that may be relevant to the relief requested in his pending Petition for a Writ of Habeas Corpus Under 25 U.S.C. § 2241, filed January 14, 2022 [Doc. 1], and an amended version of which was filed on February 24, 2022 [Doc. 9] (as amended, the "Petition"). The Court construes the Motion as a request for discovery. Having reviewed the Motion and being otherwise sufficiently advised, the Court finds that the Motion is not well taken and should be denied without prejudice.

The Court, based on a showing of good cause, may authorize Petitioner to conduct discovery in this proceeding under the Federal Rules of Civil procedure. *See* Rules 1(b) and 6(a) of the Rules Governing Section 2254 Cases in the United States District Courts. In addition to a showing of good cause, to obtain leave to conduct discovery it is incumbent on Petitioner to (1) provide reasons for any requested discovery, (2) include copies of any proposed interrogatories

and requests for admission, and (3) specify any requested documents. *See* Rule 6(b) of the Rules Governing Section 2254 Cases in the United States District Courts.

At this stage of this proceeding, Petitioner's request for discovery is premature. The Petition is under preliminary review pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. It is therefore too early for the Court to determine whether, and what, discovery should be allowed pursuant to Rule 6(a). The Court will deny the Motion without prejudice to Petitioner's prerogative to file a motion for leave to examine medical records after the Court completes its initial review and determines whether to order Respondent to answer the Petition. *See* Rule 5(a) of the Rules Governing Section 2254 Cases in the United States District Courts.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Motion [Doc. 2] is **DENIED** without prejudice.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE